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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/742,885	12/21/2000	Rudolph W. Frey	24430.8	8238

7590 06/12/2002

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EXAMINER	
SHAY, DAVID M	

ART UNIT	PAPER NUMBER
3739	8

DATE MAILED: 06/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)
09/742,885	Fray et al
Examiner	**Group Art Unit**
L. Shay	3737

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE —3— MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

☑ Responsive to communication(s) filed on February 12, 2002.

☐ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle,* 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

☑ Claim(s) 1-10 is/are pending in the application.

Of the above claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☑ Claim(s) 1-10 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 11 9(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

*Certified copies not received: _____.

Attachment(s)

☑ Information Disclosure Statement(s), PTO-1449, Paper No(s). 3 0 7

☐ Interview Summary, PTO-413

☑ Notice of Reference(s) Cited, PTO-892

☐ Notice of Informal Patent Application, PTO-152

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Other _____

Office Action Summary

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 4, 5 and 8-10 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Bille et al ('586).

Bille et al teach a recurvature process as claimed wherein the lack of plume interference is inherent (see, e.g. column 2, line 48 to column 6, line 11).

3. Claims 1-3, 6, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bille et al ('586) in combination with Warner et al. Bille et al ('586) teach a method such as claimed Warner et al teach the desirability of creating a surface flap prior to ablating corneal stroma. It would have been obvious to the artisan of ordinary skill to employ the ablation method of Bille et al ('586) in the method of Warner et al, since this provides more accurate ablation, as taught by Bille et al ('586) thus producing a method such as claimed.

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1-10 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No 5,632,742. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are merely an obvious change in scope.

6. Claims 1-10 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No.5,849,006. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are merely obvious change in scope.

7. Claims 1-10 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 3 of U.S. Patent No. 5,980,513. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are merely an obvious change in scope.

8. Claims 1-10 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-44 of copending Application No.09/745,285. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are merely an obvious change in scope.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

9. Claims 1-10 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of copending Application No. 09/745,193. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are merely an obvious change in scope.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

10. Claims 1-10 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 2 of copending Application No. 09/745,194. Although the conflicting claims are not identical, they are not patentably distinct from each other because The claims are merely an obvious change in scope.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

11. Claims 1-10 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim1-52 of copending Application No. 09/745,191. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are merely an obvios change in scope.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

12. Claims 1-10 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-17 of copending Application No. 09/745,195. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are merely an obvious change in scope.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

13. Claims 1-10 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of copending Application No. 09/742,884. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are merely an obvious change in an scope.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

The 1449 and references of applicants information disclosure statement filed October 19, 2001 has apparently been misplaced, only the cover sheet of the mailing is in the file. If it is still desired that these references be considered , they will need to be resubmitted . Regarding the information disclosure statement filed May 1, 2001, the article to Pulianto et al (reference BG) has not been considered , as the copy submitted is illegible.

Any inquiry concerning this communication should be directed to David Shay at telephone number (703) 308-2215

DAVID M. SHAY
PRIMARY EXAMINER
GROUP 330